INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes and regulations involved	2
Statement	2
1. Background of the case	3
2. Proceedings in the district court	5
3. Proceedings in the court of appeals	7
Argument	12
Conclusion	19
Appendix	20

CITATIONS

Cases:

Boeing Airplane Company v. *Coggeshall*, 280 F. 2d 651	13
Boske v. *Comingore*, 177 U.S. 459	13
Gardner v. *Anderson*, 9 Fed. Cas. 1158, No. 5220	14
Hartnett, Appeal of, 85 Pa. 433	13
Kaiser Aluminum and Chemical Corp. v. *United States*, 157 F. Supp. 939	13, 14
United Air Lines, Inc. v. *United States*, 186 F. Supp. 824	18
United Air Lines, Inc. v. *United States*, 26 F.R.D. 243	18
United States Securities & Exchange Commission, Appeal of, 226 F. 2d 501	13
United States v. *Cooper*, 25 Fed. Cas. 631	13
United States v. *Deere & Co.*, 9 F.R.D. 523	15
United States v. *Reynolds*, 345 U.S. 1	12, 13, 16
Vogel v. *Gruaz*, 110 U.S. 311	13
Zuckert, In re, 28 F.R.D. 29	7

Statute and Regulations: Page

10 U.S.C. 8012 20
Air Force Regulation No. 62-14, issued January 25, 1956, para. 49a 3, 20
Air Force Regulation No. 62-14A, issued May 15, 1956, para. 52f 3, 21

Miscellaneous:

40 Ops. Atty. Gen. 45 13
Wolkinson, *Demands of Congressional Committees for Executive Papers*, 10 Fed. Bar J. 103 13

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 363

JACK S. MACHIN, PETITIONER

v.

EUGENE M. ZUCKERT, SECRETARY OF THE AIR FORCE

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The District of Columbia Circuit

---

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The order of the district court granting respondent's motion to quash the subpoena (J.A. 74)[1] is not reported.

The opinion and supplemental opinion of the Court of Appeals for the District of Columbia Circuit (Pet. 19-28) are reported at 316 F. 2d 336.

---

[1] The reference "J.A." is to the Joint Appendix in the Court of Appeals, filed as part of the record in this Court.

JURISDICTION

The judgment of the Court of Appeals was entered on March 9, 1963 (Pet. 29). A petition for rehearing *en banc* was denied on May 13, 1963. The petition for a writ of certiorari was filed on August 12, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, on the facts of this case, the courts below correctly sustained a claim of executive privilege by the Secretary of the Air Force and refused, absent any showing of overriding necessity, to compel disclosure of an Aircraft Accident Investigation Report in response to a subpoena *duces tecum* issued in litigation to which the United States is not a party and in which it has no interest.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set forth in an Appendix, *infra*, pp. 20-22.

STATEMENT

An Air Force B-25 airplane crashed shortly after it took off from Lowry Air Force Base on May 17, 1956. Of the four crew members on board, petitioner was the only survivor. He brought an action in the District Court for the Southern District of New York against United Aircraft Corporation on the ground that there had been a defect in the propeller assembly of the aircraft which was manufactured by the de-

fendant (Pet. 7). In connection with that suit, to which the United States is not a party, on February 1, 1961, petitioner obtained from the District Court for the District of Columbia a subpoena addressed to the Secretary of the Air Force for the production of the official Air Force Aircraft Accident Investigation Report pertaining to the crash. This action arose upon motion of the Secretary to quash the subpoena.

1. *Background of the Case.* By a letter dated July 7, 1958, petitioner demanded that the Secretary of the Air Force make available to him the entire accident investigation file, including prints of all photographs, and any parts of the wreckage of the aircraft still in the custody of the Air Force (J.A. 26-27). The Secretary refused to release the file, relying upon the confidential status given Aircraft Accident Investigation Reports by Air Force Regulations Nos. 62-14 and 62-14 A.[1] However, he enclosed a releasable summary of the report, containing in substance the findings of the Aircraft Accident Investigating Board and stating that there was "nothing in the report showing fault by any manufacturer." Further, he offered to furnish, and on petitioner's request furnished, petitioner with the names of all witnesses who testified before the Board either in person or by statement, together with their latest available addresses (J.A. 27-34).

Some 14 months later, on November 1, 1959, petitioner wrote to each of the witnesses listed, request-

[1] See Appendix, *infra*, pp. 20-22.

ing information (J.A. 34-35). Petitioner asserts that replies were received from only four of the 15 witnesses, that these replies were uninformative, and that the remaining 11 letters were either unanswered or returned because of incorrect addresses (Pet. 9). There is no evidence that petitioner again wrote to any of the witnesses, or made any effort to communicate with them personally, or tried to take their depositions.

On May 23, 1960, petitioner subpoenaed Dudley C. Sharp, the then Secretary of the Air Force, for the taking of his deposition on written interrogatories. After discussion between a member of the staff of the Judge Advocate General and counsel for petitioner, there were transmitted to petitioner on June 8, 1960, answers to extensive interrogatories, containing in large part information compiled from Air Force records and from interviews with Air Force personnel having knowledge of the facts. The names and addresses of all witnesses were again listed along with the names of Air Force personnel who had made tests on the propellers of the wrecked aircraft (J.A. 35-45).

In a letter dated June 13, 1960, petitioner acknowledged receipt of the answers to the interrogatories and stated that he was withdrawing the subpoena, since the furnishing of the answers to the interrogatories obviated "any necessity for further attempt on our part to secure the report of aircraft accidents investigation" (J.A. 45).

On November 28, 1960, petitioner advised the Air Force that he was dissatisfied with the response or lack of response from witnesses to whom he had writ-

ten, and that, notwithstanding his prior agreement, he needed to examine the Report of Aircraft Accident Investigation. Release of the report was refused, but the Air Force offered to assist petitioner in securing the cooperation of the witnesses. Petitioner rejected this suggestion and, on December 13, 1960, again served a subpoena on Secretary Sharp for the production of the Report and related forms and photographs. (J.A. 15-16).

2. *Proceedings in the district court.*[1] On January 5, 1961, Secretary Sharp filed a motion to quash the subpoena; and, upon a showing that Mr. Sharp had resigned as Secretary, the district court granted the motion (J.A. 50). Thereupon, petitioner served Secretary Zuckert with the subpoena which is the subject of this action, requiring production of the same documents requested in the earlier subpoena served upon Secretary Sharp (J.A. 3-4). On February 8, 1961, Secretary Zuckert filed a motion to quash upon the ground that, in the circumstances, the subpoena was unreasonable and oppressive. The motion incorporated by reference and relied upon affidavits by the Inspector General and the Judge Advocate General of the Air Force.

The affidavit of the Inspector General stated that aircraft accident investigations were conducted for

---

[1] The proceedings in the district court on the subpoena served on Dudley C. Sharp were designated Miscellaneous Docket No. 4-61, and the content of that record was made an exhibit in the present case, which in the district court was designated Miscellaneous Docket No. 7-61 (J.A. 1, 2, 5-50).

the purpose of preventing future aircraft accidents within the Air Force; that the effectiveness of the flight safety program depends to a large extent upon getting full information on the cause of each aircraft accident; that such information is necessarily voluntary, witnesses are encouraged to express personal opinions, and, to obtain free and frank disclosure, investigators must furnish assurances that testimony will not be used for any purpose other than flight safety; that the considerable reduction in Air Force accident rates is directly attributable to the flight safety program, of which the reports of aircraft accident investigating boards are a most significant and important part; and that, for these reasons, the release of such reports for litigation purposes would be harmful to the national security (J.A. 8-10).

The affidavit of The Judge Advocate General pointed to the deterrent effect which disclosure would have upon the objective of encouraging uninhibited admissions in future inquiry proceedings and concluded that accident investigations reports could not be furnished "without seriously hampering national security and flying safety." In addition, it stated that of the witnesses whose names and addresses had been given to petitioner, those under the control of the Air Force would be authorized to testify regarding all matters pertaining to the cause of the accident (J.A. 11-12).

Petitioner filed an opposition to the motion to quash, maintaining that the documents sought were petitioner's sole source of information concerning the

cause of the crash (J.A. 52-54). In a memorandum issued on April 25, 1961, Judge Matthews ruled that, absent any claim of privilege by the Secretary, the motion to quash should be denied. *In re Zuckert*, 28 F.R.D. 29. And on May 18, 1961, the motion was denied (J.A. 62-63).

The Secretary then filed a formal "Claim of Executive Privilege." In this claim he stated that he had carefully considered the need asserted by petitioner, and had concluded that "the production of the documents called for by the subpoena would prejudice the efficient operation of the Department of the Air Force and the defense interests of the United States, would be contrary to the public interest, and hence would not be warranted" (J.A. 64-65). On August 1, 1961, Judge Walsh granted the motion to quash on the ground of executive privilege (J.A. 74).

3. *Proceedings in the Court of Appeals.* On October 9, 1962, subsequent to oral argument in the Court of Appeals on petitioner's appeal from the order quashing the subpoena, that court issued to the Secretary an Order to Show Cause "* * * why [petitioner] should not be permitted to examine by deposition any desired witnesses from the list appearing on page 41 of the Joint Appendix herein, and why the [Secretary] should not permit any or all of such witnesses to testify as to all matters relating to the cause of the accident here involved except as to facts and matters of a classified nature, and why such witnesses should not be permitted and authorized to refresh their memories by reference to any statements made by them

before Aircraft Accident Investigating Boards or Investigating Officers, as well as other pertinent and material records that are in the possession of the United States Air Force." (Pet. 21-22).

The Secretary's response offered to petitioner the relief described in the order.[1]

In a reply (R.A. 89[2]) to the Secretary's offer, petitioner attempted to discount the value of the offer, stated that he did not wish expert testimony from Air Force personnel but desired documentary material from the Air Force investigating file for use by his expert, and asserted that the Air Force file contained photographs of parts of the wrecked airplane which were "vitally needed" by petitioner to support his claim in the private litigation.

By letter dated November 14, 1962 (R.A. 99), the Court of Appeals inquired whether the Secretary was prepared "to show to [petitioner] any photographs of the wrecked plane and its parts which may be in the possession of the Air Force, or to give copies of such photographs to him, or both." In response (R.A. 100), the Secretary stated that there were 34 such photographs, that they would be made available for inspection by petitioner, and that, if petitioner so

---

[1] The Secretary also pointed out that the names and addresses of witnesses before the board as well as permission for the taking of the testimony of those witnesses who were under the control of the Air Force, had been given petitioner prior to the inception of this litigation.

[2] The reference "R.A." follows that used by petitioner and refers to the transcript of record from the Court of Appeals.

[3] All parts of the wreckage had been disposed of.

desired, arrangements would be made to have prints made of the photographs at petitioner's expense.

Notwithstanding his earlier assertion of "vital need" for the photographs, petitioner did not examine them, but, instead, advised the court (R.A. 102) that the photographs "are in themselves of little value," and again requested disclosure of the contents of the entire investigation file. The Secretary then stood upon his claim of privilege and pointed out to the court that petitioner had not availed himself of any of the opportunities afforded to enable him to establish his case in the private litigation (R.A. 113).

In January 17, 1963, the court rendered its decision in which it reviewed the record, including the affidavits and the claim of privilege based upon the necessity for maintaining the confidentiality of the investigation report, and held, *inter alia*:

> We agree with the Government that when disclosure of investigative reports obtained in large part through promises of confidentiality would hamper the efficient operation of an important Government program and perhaps even, as the Secretary here claims, impair the national security by weakening a branch of the military, the reports should be considered privileged. Especially is that so when they are sought in connection with a litigation to which the Government is not a party and when the responsible executive official has been as cooperative as the record in this case reveals the Secretary to have been.
>
> Insofar, therefore, as the subpoena sought to obtain testimony of private parties who partici-

> pated in the investigation, we agree with the District Court that such information in the hands of the Government is privileged. The privilege extends to any conclusions that might be based in any fashion on such privileged information. Also, a recognized privilege attaches to any portions of the report reflecting Air Force deliberations or recommendations as to policies that should be pursued. [Pet. 23-24.]

The court went on, however, to suggest that "factual findings of Air Force mechanics who examined the wreckage" could be revealed without jeopardizing the future success of the Air Force accident investigations. Recognizing at the same time that there might be reasons not then appearing to the court why even such portion of the report should be immune from subpoena, the court gave the Secretary an opportunity to show cause why such "factual findings" should not be given to petitioner (Pet. 24-25). The Secretary responded (R.A. 124) that in this particular case it would not be inimical to the defense interests of the United States or contrary to the public interest to disclose the purely factual findings made by the mechanics, and submitted a record of the tests run on the propellers and propeller assemblies and a report thereon by the mechanics, from which, however, he deleted matters of speculation, conjecture and opinion. Petitioner objected (R.A. 133) to such deletions; and the Secretary replied (R.A. 137).

In a Supplemental Opinion filed March 9, 1963, the Court of Appeals, noting that it had offered petitioner, "in the interest of substantial justice," partial

relief from the district court's decision in the form of the disclosure of the factual findings of the mechanics, upheld its earlier ruling on privilege. However, it ruled that the Secretary, in deleting "opinions" and "conclusions" had construed the term "factual findings" too narrowly, and that he should submit the full contents of the mechanics' reports to the district court for determination of what material therein would come within the privilege set forth in the opinion of January 17, 1963 (Pet. 26-28). The Secretary agreed to submit the mechanics' reports in full to the district court. In addition, the Secretary stated that he was prepared to submit two other documents (one relating to certain instrument readings and the other covering a short statement respecting the plane's hydraulic system), which, while they did not refer to the propeller or propeller assemblies in which petitioner stressed his interest, were considered, upon a reexamination of the investigation file, as properly coming within the definition of "factual findings of the mechanics who investigated the wreckage" (R.A. 154-155).

Subsequent to the court's Supplemental Opinion of March 9, 1963, petitioner moved (R.A. 146) for clarification of the supplemental opinion and requested the court, by way of an amended judgment, (1) to require the Secretary to submit "the entire Aircraft Investigation Report" to the district court for examination, and (2) to compel the Air Force "to make available for deposition all witnesses whose names have heretofore been furnished," and to instruct the Government "to provide them with copies

of their statements made before the aircraft accident board so that they can refresh their recollections."

The Secretary responded (R.A. 153) pointing out that in view of the court's ruling on privilege, there was no need to submit the entire report to the district court. Further, he stated that there was no warrant for requiring the Air Force "to make available for deposition" all of the witnesses listed (including in principal part private individuals), if this meant producing such persons, paying transportation costs, and the like. However, as to documents necessary for their use in refreshing their recollections, he would make arrangements, upon proper advice, to have such documents available at the place where the witnesses were to testify.

Petitioner then filed a petition for rehearing *en banc*, which was denied by the court on May 13, 1963.

ARGUMENT

The decision of the court below rests upon well established principles relating to executive privilege. The case turns upon its own particular facts; there is no conflict in decisions; and the holding below is clearly correct. Further review by this Court is not warranted.

1. The Secretary of the Air Force was asserting a familiar executive privilege in refusing to divulge the contents of the Aircraft Accident Investigation Report. This privilege is not limited to military secrets such as those involved in *United States* v.

Reynolds, 345 U.S. 1. It applies in any case where the executive policy against disclosure is necessary to the fulfillment of a highly significant government function entrusted to the Executive Branch. See, *Boske* v. *Comingore*, 177 U.S. 459; *Kaiser Aluminum and Chemical Corp.* v. *United States*, 157 F. Supp. 939, 945 (C. Cls.); 40 Ops. Atty. Gen. 45, 49. Indeed, the privilege has constitutional roots grounded in the doctrine of the separation of powers.[2] See *United States* v. *Cooper*, 25 Fed. Cas. 631; *Appeal of Hartranft*, 85 Pa. 433; 40 Ops. Atty. Gen. 45, and cases there cited; Wolkinson, *Demands of Congressional Committees for Executive Papers*, 10 Fed. Bar J. 103. The privilege, at a minimum, protects (1) voluntary information given to the government in confidence; *Vogel* v. *Gruaz*, 110 U.S. 311; *United States* v. *Deere & Co.*, 9 F.R.D. 523 (D. Minn.); and (2) intra-agency reports which contain reasoning, deliberations, expressions of views and opinions, and ultimate conclusions and recommendations as to policies; *Boeing Airplane Company* v. *Coggeshall*, 280 F. 2d 651 (C.A. D.C.); *Appeal of United States Securities and Exchange Commission*, 226 F. 2d 501 (C.A.

---

[2] *Reynolds* involved the withholding of a similar aircraft accident investigation report by the Secretary of the Air Force. Moreover, in that case, the report was sought in a suit against the United States under the Federal Tort Claims Act.

[3] As noted by this Court in *United States* v. *Reynolds*, *supra*, while the claim of executive privilege may be based on statute or regulation, the "roots go much deeper." 345 U.S. at 6, n. 9.

6); *Gardner v. Anderson*, 9 Fed. Cas. 1158, No. 5220; *Kaiser Aluminum and Chemical Corp. v. United States*, *supra*.

The reasons for the executive privilege apply with unusual clarity to the present case. The reports of Air Force investigations of aircraft accidents are prepared at the direction of the Inspector General for the sole purpose of enabling the Air Force to take corrective action to prevent further accidents. In this case, both the Inspector General and the Judge Advocate General point out in their affidavits that to release Reports of Air Force Aircraft Accidents for litigation purposes, contrary to the Air Force regulations which prohibit their use other than for flight safety purposes, would inhibit admissions, full and frank disclosures, and expressions of opinion by many of the most necessary witnesses appearing before the investigation board.* In the opinion of the Air Force, candor without fear of reprisal or retaliation is necessary to the success of the flight safety program and attendant accident prevention (J.A. 8-12). These factors weigh heavily against disclosure.

The Air Force flight safety program, at the core of which is the investigation of aircraft accidents with the full cooperation of all parties who may throw light on the cause of the accident, has been shown to be of great importance to the programs carried on by

---

*As stated by the Inspector General (J.A. 9): "Technical representatives of the aviation industry currently assisting in aircraft accident investigations could not be expected to find their companies at fault if their reports could be used in actions against their companies."

the Air Force. This becomes apparent from the affidavit of the Inspector General where he says:

> * * * it was determined that during 1950, the year in which an agency was created in the Air Force for the specific purpose of decreasing the number and effect of aircraft accidents, the Air Force aircraft accident rate was 36 major aircraft accidents per 100,000 flying hours, and the dollar cost to the Air Force in materiel losses and aircraft repairs alone was estimated to be $137,851,603.00. In the succeeding years, the aircraft accident rate declined steadily until, in calendar year 1959, the aircraft accident rate reached a level of 8.2 major aircraft accidents per 100,000 flying hours. Had the 1950 rate of 36 major aircraft accidents per 100,000 flying hours prevailed during 1959, the additional dollar cost to the Air Force would have been $3,045,000,000.00. Although this dollar savings is of considerable importance to the taxpayers, to the Air Force and to the Nation even more significant is the fact that some 2250 additional aircraft would have been destroyed or substantially damaged in 1959 if no reduction in the 1950 rate had taken place. In 1950 the fatality rate per 100,000 flying hours was slightly in excess of 16. The fatality rate in 1959 was approximately 4.5 fatalities per 100,000 flying hours. If no reduction in the 1950 fatality rate had occurred, almost four times as many lives would have been lost. Of course no pecuniary evaluation can be placed on the lives of pilots and crew members saved by this reduced accident rate, but the salubrious effect of this on the national security is plainly evident.

> * * * this trend of reduced accident rates is not a statistical phenomenon which accompanies an increase in flying hours. On the contrary, during the previous rapid expansion in flying prior to and during the early part of World War II, accident rates increased tremendously. The Air Force has found that reduced accident rates are directly attributable to its flight safety program, and the Reports of Aircraft Accident Investigating Boards are a most significant and important part of the flight safety program. [J.A. 9-10.]

It was for these reasons that the Secretary of the Air Force asserted an executive privilege to withhold the documents sought in this case, upon the ground that production "would prejudice the efficient operation of the Department of the Air Force and the defense interests of the United States, would be contrary to the public interest, and hence would not be warranted."

2. As the court below recognized, however, there is no real reason in the present case to assess the full scope of the executive privilege relied upon by the Secretary of the Air Force. While in the courts below petitioner asserted a need for the entire report, he has not yet availed himself of opportunities afforded him to establish his case against the propeller manufacturer without disclosure of the report. The significance of this failure is discussed in *United States* v. *Reynolds*, *supra*, where this Court pointed out (345 U.S. at 11):

> In each case, the showing of necessity which is made will determine how far the court should

> probe in satisfying itself that the occasion for invoking the privilege is appropriate. Where there is a strong showing of necessity, the claim of privilege should not be lightly accepted, but even the most compelling necessity cannot overcome the claim of privilege if the court is ultimately satisfied that military secrets are at stake. *A fortiori*, where necessity is dubious, a formal claim of privilege, made under the circumstances of this case, will have to prevail. Here, necessity was greatly minimized by an available alternative, which might have given respondents the evidence to make out their case without forcing a showdown on the claim of privilege. By their failure to pursue that alternative, respondents have posed the privilege question for decision with the formal claim of privilege set against a dubious showing of necessity.

Petitioner has the names and addresses of all witnesses who testified before the Board, and the offer of the Government to permit all such persons to be examined by deposition, to testify, and to refresh their recollections from statements made by them and from other pertinent material in the possession of the Air Force. Information from the maintenance records of the airplane was given petitioner, interrogatories were answered by the Secretary, photographs of the wrecked aircraft and its components were made available, and reports of factual findings of the Air Force mechanics who examined the wreckage have been offered. Yet it nowhere appears that petitioner has attempted to take the deposition of any witness, to call any witness to testify, to obtain or

even to examine the photographs of the wreckage, or otherwise to make any serious effort to use the information available to him for the successful prosecution of his private litigation. Thus, as in the *Reynolds* case, no sufficient reason exists to force a "showdown" on the claim of privilege,[*] particularly since, as the Court of Appeals noted, the report is "sought in connection with a litigation to which the Government is not a party and * * * the responsible executive official has been as cooperative as the record in this case reveals the Secretary to have been" (Pet. 24).

---

[*] See also *United Air Lines, Inc.* v. *United States*, 26 F.R.D. 213 (D. Del.), where, after a formal claim of privilege had been filed, the court declined, upon the plaintiff's "minimal showing," to require the Government to produce those portions of proceedings before the aircraft accident investigation board which consisted of opinions, conclusions and recommendations. Compare *United Air Lines, Inc.* v. *United States*, 186 F. Supp. 821, an earlier decision in the same case, which petitioner stresses (Pet. 12, 14, 16), but which is, in effect, modified by the cited subsequent decision.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

ARCHIBALD COX
Solicitor General.

JOHN W. DOUGLAS,
Assistant Attorney General.
ALAN S. ROSENTHAL,
KATHRYN H. BALDWIN,
Attorneys.

October 1963

APPENDIX

1. Title 10, United States Code, Section 8012, provides in pertinent part as follows:

> §8012. *Secretary of the Air Force: powers and duties; delegation by; compensation*
>
> * * * * *
>
> (b) The Secretary is responsible for and has the authority necessary to conduct all affairs of the Department of the Air Force, including—
>
> (1) functions necessary or appropriate for the training, operations, administration, logistical support and maintenance, welfare, preparedness, and effectiveness of the Air Force, including research and development;
>
> * * * * *
>
> (f) The Secretary may prescribe regulations to carry out his functions, powers, and duties under this title.
>
> * * * * *

2. Air Force Regulation No. 62-14; issued January 25, 1956, provides in paragraph 13a:

> a. *Privileged Reports.* In many instances the occurrence of an accident requires an investigation for purposes other than accident prevention. It is Air Force Policy that the reports listed in this subparagraph and their attachments will be used *only* to determine all factors related to aircraft accidents and incidents so that corrective action may be taken in the interest of accident prevention. The reports just mentioned and their attachments are prepared by, for, or at the direction of The Inspector General, USAF, and

his assistants, and are therefore *privileged documents*. They may not be used as evidence or to obtain evidence for disciplinary action; as evidence in determining the misconduct or line-of-duty status of any personnel; as evidence before flying evaluation boards; as evidence to determine liability in claims against the Government; as evidence to determine pecuniary liability. Moreover, they may not be used or introduced as evidence in courts of law for any purpose. These reports and their attachments or copies and extracts will not be appended to or inclosed in any report or document, unless the sole purpose of the other reports or documents is to prevent aircraft accidents. The privileged reports referred to above are as follow:

(1) Report of AF Aircraft Accident (AF Forms 14, 14A, 14B, 14C, 14D, 14E, 14F).
(2) Crash report.
(3) Preliminary report.
(4) Supplementary report.
(5) Operational hazard report.
(6) Special aircraft accident investigation report by the Directorate of Flight Safety Research.

* * * *

3. Air Force Regulation No. 62-14A, Change, issued May 15, 1956, provides in paragraph 52 f.:

f. *Requests or Subpoena for Information:*

(1) Requests or subpoenas for information or documents to be used in pending or reasonably imminent litigation, as well as administrative claims against the Government, will be referred

to The Judge Advocate General, Headquarters, USAF, Washington 25, D.C. As previously stated, the policy of the Air Force is that no part of any reports listed in paragraph 49a, including attachments and extracts, will be used as evidence in any suit or action for damage growing out of any matter mentioned in such reports. In this respect, release of the official written report of investigation or an official extract from it would violate the purpose for which the information was accumulated: namely, the *prevention of aircraft accidents*. [J.A. 5-7.]

U. S. GOVERNMENT PRINTING OFFICE 1963 70058 30